

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.581 of 2013

1.H.Dhanasekaran
2.K.Nagarajan

... Petitioners

Vs.

1.M/S.Shriram Transport Finance Company Ltd.,
Rep. by its Junior Executive, S.Varadhan,
Mookambika Complex 4 Lady Desikachari Road,
Mylapore, Chennai - 600 004.

2.S.S.Mariappan

... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 28.02.2013 in Arbitration case No.581 of 2012.

For Petitioners : Ms.C.R.Rose Radhi Jijo for
M/S.E.Martin Jaya Kumar

For 1st Respondent : Mr.S.Elangovan for
Mr.K.S.Ramakrishnan

ORDER

Petitioners have come forward with this Petition challenging the Arbitral Award dated 28.02.2013 passed by the sole Arbitrator in Arbitration Case No.581 of 2012.

2. Before the Arbitrator, it is the case of the 1st Respondent/Claimant viz. M/S.Shriram Transport Finance Company Limited that the Petitioners herein entered into a Loan cum Hypothecation Agreement on 27.06.2009 with them for purchasing TATA Motors Limited Tipper HMV Goods vehicle. A sum of Rs.13,14,955/- was advanced as Loan to the 1st Petitioner, who is the principal borrower and the 2nd Petitioner herein stood as Guarantor. The loan amount was jointly and severally payable by the Petitioners herein in 60 monthly instalments.

3. It is the further case of the 1st Respondent/Claimant that the Petitioners had paid only a sum of Rs.21,915/- towards the first instalment and a sum of Rs.17,305/- towards the second instalment. Despite repeated demands, the 1st Petitioner did not pay the arrears. Since the Petitioners herein did not come forward to settle the outstanding dues, the 1st Respondent/Claimant seized the vehicle and sold the same for the best available market price of Rs.4,80,000/-. As the Petitioners herein were liable to pay a sum of Rs.5,99,970/- towards outstanding dues, the 1st Respondent/Claimant sent a legal notice vide Ex.C6 to the Petitioners herein. Since there was no response to the same, the 1st Respondent/Claimant initiated Arbitration proceedings against the Petitioners herein.

4. In the Arbitral Award, it is seen that notices were sent to the Petitioners herein, but, the Petitioners failed to appear before the Arbitrator. In the Arbitral proceedings, on the side of the 1st Respondent/Claimant, P.W.1 was examined and nine Exhibits vide Exs.C1 to C9 were marked. As none represented the Petitioners, the Arbitrator proceeded with the Arbitration proceedings and passed the Award under challenge, which reads as under:

"In view of the discussion made in Points 1 to 4, it is held that the claimant has clearly proved his case by both oral and documentary evidence. The claimant is entitled to recover Rs.5,59,970/-, but with further interest at the rate of 18% per annum from the Respondents. The claimant is entitled to the cost of the arbitration subject to filling of the bill of cost.

In the result, an Award is passed directing both the Respondents to pay to the claimant, a sum of Rs.5,99,970/- along with further interest at 18% p.a. from the date of the Claim Petition (30.06.2012) till the date of realization and its cost. Accordingly, points 5 and 6 are answered in the favour of the claimant."

5. Learned counsel for the Petitioners submitted that the Arbitrator has passed an *exparte* Award, without giving reasonable opportunity of hearing to the Petitioners herein. According to him, the 1st Respondent/Claimant has committed a grave error by playing fraud in the sale of the vehicle, i.e. by selling the vehicle at Rs.4,80,000/- much less than the market value, when the vehicle was actually assessed to about Rs.16 lakhs.

6. In reply, learned counsel appearing for the 1st Respondent/Claimant submitted that sufficient opportunity was given to the Petitioners to represent their case and that pre-Arbitration notice was served on them.

7. The contention of the learned counsel for the Petitioners that the Award under challenge is an *exparte* Award cannot be accepted, as legal notice dated 31.07.2011 have been served on the Petitioners and Acknowledgement Cards received from the Petitioners on 16.08.2011 have been marked as Exs.C7 and C8. Hence, the Arbitral Award cannot be said to be an *exparte* Award, when the learned Arbitrator has considered the case and rendered findings only on merits.

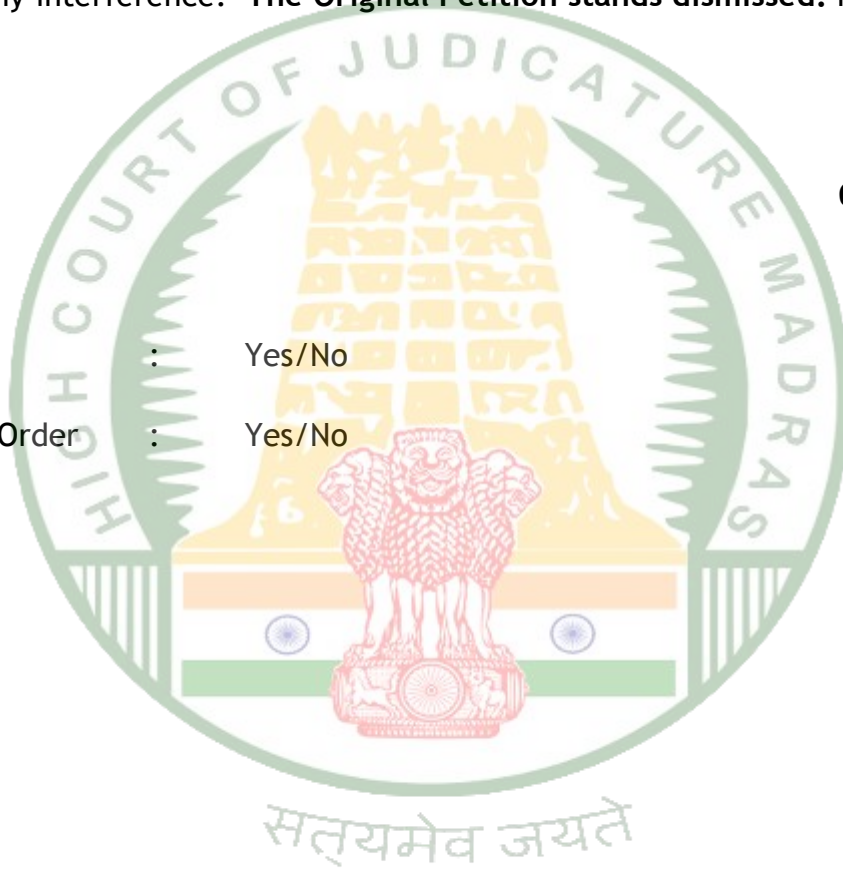
8. Hence, this Court is of the view that there is no merit in the contention of the Petitioners and the Award passed by the Arbitrator does not require any interference. **The Original Petition stands dismissed.** No costs.

05.12.2018

Index : Yes/No

Speaking Order : Yes/No

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S.VAIDYANATHAN,J.

(aeb/tsg)



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